

106TH CONGRESS
2D SESSION

H. R. 4227

To amend the Immigration and Nationality Act with respect to the number of aliens granted nonimmigrant status described in section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, to implement measures to prevent fraud and abuse in the granting of such status, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2000

Mr. SMITH of Texas (for himself, Mr. CAMPBELL, and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act with respect to the number of aliens granted nonimmigrant status described in section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, to implement measures to prevent fraud and abuse in the granting of such status, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Technology Worker Temporary Relief Act”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—NUMERICAL LIMITATIONS ON H-1B NONIMMIGRANTS

Sec. 101. Temporary increase in access to H1-B nonimmigrants.

Sec. 102. Secretary of State to maintain records on H-1B nonimmigrants.

TITLE II—NEW REQUIREMENTS ON PETITIONING EMPLOYERS

Sec. 201. Minimum salary requirement.

Sec. 202. Submission of data on H1-B nonimmigrants after employment commencement.

Sec. 203. English language requirement for H1-B nonimmigrants providing instruction.

Sec. 204. Effective date.

TITLE III—ANTI-FRAUD PROVISIONS FOR H-1B NONIMMIGRANTS

Sec. 301. Requiring specialty occupation workers and fashion models to obtain status as an H-1B nonimmigrant.

Sec. 302. Requiring full-time employment.

Sec. 303. Requirements for specialty occupation.

Sec. 304. Anti-fraud fee.

Sec. 305. Additional requirements on petitioning employers.

Sec. 306. Requiring filing of W-2 forms.

Sec. 307. Effective date.

TITLE IV—EXTENSION OF PROVISIONS FROM THE AMERICAN COMPETITIVENESS AND WORKFORCE IMPROVEMENT ACT OF 1998

Sec. 401. Protection against displacement of United States workers in case of H-1B dependent employers.

Sec. 402. Additional investigative authority.

3 **TITLE I—NUMERICAL LIMITA-** 4 **TIONS ON H-1B NON-** 5 **IMMIGRANTS.**

6 **SEC. 101. TEMPORARY INCREASE IN ACCESS TO H-1B NON-** 7 **IMMIGRANTS.**

8 (a) ELIMINATING NUMERICAL LIMITATION FOR FIS-
 9 CAL YEAR 2000; CONDITIONING INCREASES FOR FISCAL
 10 YEARS 2001 AND 2002.—Section 214(g)(1)(A) of the Im-

1 migration and Nationality Act (8 U.S.C. 1184(g)(1)(A))
2 is amended to read as follows:

3 “(A) under section 101(a)(15)(H)(i)(b), may
4 not exceed—

5 “(i) subject to paragraph (5), 107,500 in
6 fiscal year 2001;

7 “(ii) subject to paragraph (5), 65,000 in
8 fiscal year 2002; and

9 “(iii) 65,000 in each succeeding fiscal year;
10 or”.

11 (b) CONDITIONS ON INCREASES.—Section 214(g) of
12 the Immigration and Nationality Act (8 U.S.C. 1184(g))
13 is amended by adding at the end the following:

14 “(5)(A) The numerical limitations in clauses (i) and
15 (ii) of paragraph (1)(A) shall not apply to an alien de-
16 scribed in subparagraph (B) after the date on which final
17 regulations fully implementing all provisions of the Amer-
18 ican Competitiveness and Workforce Improvement Act of
19 1998 (as contained in title IV of division C of the Omnibus
20 Consolidated and Emergency Supplemental Appropria-
21 tions Act, 1999; Public Law 105–277) become effective.

22 “(B) An alien is described in this subparagraph if—

23 “(i) the alien, disregarding clauses (i) and (ii)
24 of paragraph (1)(A), otherwise is eligible to be

1 issued a visa or provided nonimmigrant status under
2 section 101(a)(15)(H)(i)(b); and

3 “(ii) the employer petitioning under subsection
4 (c)(1) with respect to the alien demonstrates in the
5 petition that—

6 “(I) as of the last day of the employer’s
7 previous tax year, there was a net increase (as
8 compared with the first day of such tax year)
9 in the number of full-time equivalent United
10 States workers (as defined in section
11 212(n)(4)(E)) on the employer’s payroll;

12 “(II) as of the end of the employer’s pre-
13 vious tax year, there was a net increase (as
14 compared with the prior tax year) in the total
15 wages (including cash bonuses and similar com-
16 pensation) paid to United States workers de-
17 scribed in subclause (I) during such year; and

18 “(III) as of the end of the employer’s pre-
19 vious tax year, there was a net increase (as
20 compared with the prior tax year) in the me-
21 dian of the wages described in subclause (II).

22 “(C) In making the determinations under subpara-
23 graph (B)(ii)—

24 “(i) any group treated as a single employer
25 under subsection (b), (c), (m), or (o) of section 414

1 of the Internal Revenue Code of 1986 shall be treat-
2 ed as a single employer; and

3 “(ii) the Attorney General shall disregard work-
4 ers who ceased employment with an employer by
5 reason of the employer’s having sold, or otherwise le-
6 gally transferred for consideration, the assets of a
7 division or other severable portion of the employer’s
8 business to another person before the end of the em-
9 ployer’s previous tax year.”.

10 (c) EFFECTIVE DATES.—

11 (1) ELIMINATING NUMERICAL LIMITATION FOR
12 FISCAL YEAR 2000.—The amendment made by sub-
13 section (a), to the extent that it eliminates the nu-
14 merical limitation under section 214(g)(1)(A)(iii) of
15 the Immigration and Nationality Act, as in effect on
16 the day before the date of the enactment of this Act,
17 shall take effect on the date of the enactment of this
18 Act.

19 (2) CONDITIONING INCREASES FOR FISCAL
20 YEARS 2001 AND 2002.—In all other respects, the
21 amendments made by this section shall take effect
22 on October 1, 2000, without regard to whether or
23 not proposed or final regulations to carry out such
24 amendments have been promulgated.

1 **SEC. 102. SECRETARY OF STATE TO MAINTAIN RECORDS ON**
2 **H-1B NONIMMIGRANTS.**

3 (a) IN GENERAL.—Section 214(g)(3) of the Immi-
4 gration and Nationality Act (8 U.S.C. 1184(g)(3)) is
5 amended—

6 (1) by striking “(3)” and inserting “(3)(A)”;
7 and

8 (2) by adding at the end the following:

9 “(B) Records with respect to the issuance of visas
10 (or the provision otherwise of nonimmigrant status) under
11 section 101(a)(15)(H)(i)(b) shall be maintained in accord-
12 ance with regulations prescribed by the Secretary of
13 State.”.

14 (b) CONFORMING AMENDMENTS.—Section 416 of the
15 American Competitiveness and Workforce Improvement
16 Act of 1998 (Public Law 105–277; 112 Stat. 2681–655;
17 8 U.S.C. 1184 note) is amended—

18 (1) in subsection (a)—

19 (A) by striking “214(g)(1)” and inserting
20 “214(g)(1)(B)”;

21 (B) by striking “1184(g)(1))” and insert-
22 ing “1184(g)(1)(B))”; and

23 (C) by adding at the end “The Secretary
24 of State, with the assistance of the Attorney
25 General, shall take such steps as are necessary
26 to maintain an accurate count of the number of

1 aliens subject to the numerical limitations of
 2 section 214(g)(1)(A) of such Act (8 U.S.C.
 3 1184(g)(1)(A)) who are issued visas or other-
 4 wise provided nonimmigrant status.”;

5 (2) in subsection (b), by striking “to count”
 6 and inserting “to count, or to assist the Secretary
 7 of State in accurately counting,”; and

8 (3) in subsection (c)—

9 (A) in paragraph (1), by striking “Attor-
 10 ney General” and inserting “Secretary of
 11 State”; and

12 (B) in paragraph (2), by inserting “and
 13 the Secretary of State” after “Attorney Gen-
 14 eral”.

15 (c) EFFECTIVE DATE.—The amendments made by
 16 this section shall take effect beginning with the first fiscal
 17 year that begins after the date of the enactment of this
 18 Act.

19 **TITLE II—NEW REQUIREMENTS** 20 **ON PETITIONING EMPLOYERS**

21 **SEC. 201. MINIMUM SALARY REQUIREMENT.**

22 Section 212(n)(1)(A) of the Immigration and Nation-
 23 ality Act (8 U.S.C. 1182(n)(1)(A)) is amended—

24 (1) by striking “and” at the end of clause (i);

1 (2) by redesignating clause (ii) as clause (iii);

2 and

3 (3) by inserting after clause (i) the following:

4 “(ii) is offering and will offer during the
 5 period of authorized employment to H–1B non-
 6 immigrants wages that are at least equal to an
 7 annual salary of \$40,000 (including cash bo-
 8 nuses and similar compensation), except if the
 9 employer is an institution of higher education
 10 (as defined in section 101(a) of the Higher
 11 Education Act of 1965) or a related or affili-
 12 ated nonprofit entity, a nonprofit research orga-
 13 nization, or a governmental research organiza-
 14 tion, and”.

15 **SEC. 202. SUBMISSION OF DATA ON H1-B NONIMMIGRANTS**

16 **AFTER EMPLOYMENT COMMENCEMENT.**

17 (a) IN GENERAL.—Section 212(n)(1) of the Immi-
 18 gration and Nationality Act (8 U.S.C. 1182(n)(1)) is
 19 amended by inserting after subparagraph (G) the fol-
 20 lowing:

21 “(H) The employer will electronically submit to
 22 the Secretary, not later than 30 days after the date
 23 on which an H–1B nonimmigrant commences em-
 24 ployment with the employer, data in an electronic

1 format containing information about the non-
2 immigrant, including the following:

3 “(i) The name of the nonimmigrant.

4 “(ii) The foreign state of which the non-
5 immigrant is a citizen or national.

6 “(iii) The academic degrees obtained by
7 the nonimmigrant.

8 “(iv) The nonimmigrant’s job title.

9 “(v) The date on which employment com-
10 menced.

11 “(vi) The nonimmigrant’s salary or wage
12 level.”.

13 (b) REQUIREMENT ON SECRETARY.—Not later than
14 30 days after the receipt of data from an employer that
15 is provided in accordance with section 212(n)(1)(H) of the
16 Immigration and Nationality Act (8 U.S.C.
17 1182(n)(1)(H)), as inserted by subsection (a), the Sec-
18 retary of Labor shall make such data available on the
19 Internet.

20 **SEC. 203. ENGLISH LANGUAGE REQUIREMENT FOR H-1B**
21 **NONIMMIGRANTS PROVIDING INSTRUCTION.**

22 Section 214(i)(2) of the Immigration and Nationality
23 Act (8 U.S.C. 1184(i)(2)) is amended—

24 (1) by striking “(A)” and inserting “(i)”;

25 (2) by striking “(B)” and inserting “(ii)”;

1 (3) in subparagraph (C), by striking “(ii)” and
2 inserting “(II)”

3 (4) by striking “(C)(i)” and inserting “(iii)(I)”;

4 (5) by striking “(2)” and inserting “(2)(A)”;

5 and

6 (6) by adding at the end the following:

7 “(B) In the case of a position in a specialty occupa-
8 tion that requires an alien to provide instruction in any
9 subject to students in the United States, the requirements
10 of this paragraph also include a requirement that the alien
11 have the level of competence in oral and written English
12 considered by the Attorney General, in consultation with
13 the Secretary of Education, to be appropriate for work of
14 the kind in which the alien will be engaged, as shown by
15 an appropriate score on one or more nationally recognized,
16 commercially available, standardized assessments of abil-
17 ity to speak and write English.”.

18 **SEC. 204. EFFECTIVE DATE.**

19 The amendments made by this title shall take effect
20 on the date of the enactment of this Act and shall apply
21 to petitions filed under section 214(c), and applications
22 filed under section 212(n)(1), of the Immigration and Na-
23 tionality Act on and after October 1, 2000.

1 **TITLE III—ANTI-FRAUD PROVI-**
2 **SIONS FOR H-1B NON-**
3 **IMMIGRANTS**

4 **SEC. 301. REQUIRING SPECIALTY OCCUPATION WORKERS**
5 **AND FASHION MODELS TO OBTAIN STATUS**
6 **AS AN H-1B NONIMMIGRANT.**

7 Section 214(g) of the Immigration and Nationality
8 Act (8 U.S.C. 1184(g)), as amended by section 101 of this
9 Act, is further amended by adding at the end the fol-
10 lowing:

11 “(6) Notwithstanding any other provision of this Act,
12 any alien admitted or provided status as a nonimmigrant
13 in order to provide services in a specialty occupation de-
14 scribed in subsection (i)(1) (other than services described
15 in subparagraph (H)(ii)(a), (O), or (P) of section
16 101(a)(15)) or as a fashion model shall have been issued
17 a visa (or otherwise been provided nonimmigrant status)
18 under section 101(a)(15)(H)(i)(b).”.

19 **SEC. 302. REQUIRING FULL-TIME EMPLOYMENT.**

20 (a) IN GENERAL.—Section 101(a)(15)(H)(i)(b) of
21 the Immigration and Nationality Act (8 U.S.C.
22 1101(a)(15)(H)(i)(b)) is amended by striking “or (P))”
23 and inserting “or (P)), not less than 35 hours per week
24 (except if the employer is an institution of higher edu-
25 cation (as defined in section 101(a) of the Higher Edu-

1 cation Act of 1965) or a related or affiliated nonprofit en-
 2 tity),”.

3 (b) CONFORMING AMENDMENTS.—Section
 4 212(n)(2)(C)(vii) of the Immigration and Nationality Act
 5 (8 U.S.C. 1182(n)(2)(C)(vii)) is amended—

6 (1) in subclause (I), by striking “a full-time”
 7 and inserting “an”;

8 (2) by striking subclause (II);

9 (3) in subclause (III), by striking “subclauses
 10 (I) and (II)” and inserting “subclause (I)”; and

11 (4) by redesignating subclauses (III) through
 12 (VI) as subclauses (II) through (V), respectively.

13 **SEC. 303. REQUIREMENTS FOR SPECIALTY OCCUPATION.**

14 (a) IN GENERAL.—Section 214(i) of the Immigration
 15 and Nationality Act (8 U.S.C. 1184(i)), as amended by
 16 section 203 of this Act, is further amended—

17 (1) by amending paragraph (1)(B) to read as
 18 follows:

19 “(B) attainment of a bachelor’s degree (or
 20 higher degree) in the specific specialty as a min-
 21 imum for entry into the occupation in the United
 22 States.”;

23 (2) by amending paragraph (2)(A)(iii) to read
 24 as follows:

1 “(iii)(I) completion of a bachelor’s degree (or
2 higher degree) that is not described in paragraph
3 (1)(B), (II) experience in the specialty equivalent to
4 the completion of the degree described in paragraph
5 (1)(B) for the occupation, and (III) recognition of
6 expertise in the specialty through progressively re-
7 sponsible positions relating to the specialty.”; and

8 (3) by adding at the end the following:

9 “(3)(A) Subject to subparagraph (B), for purposes
10 of this subsection, the term ‘bachelor’s degree (or higher
11 degree)’ includes a foreign degree that is a recognized for-
12 eign equivalent of a bachelor’s degree (or higher degree).

13 “(B)(i) In the case of an alien obtaining a foreign
14 degree, any determination with respect to the equivalence
15 of that degree to a degree obtained in the United States
16 shall be made by the Secretary of State.

17 “(ii) In carrying out clause (i), the Secretary of State
18 shall verify the authenticity of any foreign educational cre-
19 dential proffered by an alien. The Secretary of State may
20 enter into contracts with public or private entities in con-
21 ducting such verifications.

22 “(iii) In addition to any other fees authorized by law,
23 the Secretary of State may impose a fee on an employer
24 filing a petition under subsection (c)(1) initially to grant
25 an alien nonimmigrant status described in section

1 101(a)(15)(H)(i)(b), if a determination or verification de-
 2 scribed in clause (i) or (ii) is required with respect to the
 3 petition. Fees collected under this clause shall be deposited
 4 in the Treasury in accordance with section 286(t).”.

5 (b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—
 6 Section 286 of the Immigration and Nationality Act (8
 7 U.S.C. 1356) is amended by adding at the end the fol-
 8 lowing:

9 “(t) H-1B EDUCATIONAL CREDENTIAL
 10 VERIFICATION ACCOUNT.—There is established in the
 11 general fund of the Treasury a separate account, which
 12 shall be known as the ‘H-1B Educational Credential
 13 Verification Account’. Notwithstanding any other provi-
 14 sion of law, there shall be deposited as offsetting receipts
 15 into the account all fees collected under section
 16 214(i)(3)(B)(iii). Amounts deposited into the account
 17 shall remain available to the Secretary of State until ex-
 18 pended to carry out section 214(i)(3)(B).”.

19 **SEC. 304. ANTI-FRAUD FEE.**

20 (a) IMPOSITION OF FEE.—Section 214(c) of the Im-
 21 migration and Nationality Act (8 U.S.C. 1184(c)) is
 22 amended by adding at the end the following:

23 “(10)(A) In addition to any other fees authorized by
 24 law, the Attorney General shall impose an anti-fraud fee
 25 on an employer filing a petition under paragraph (1)—

1 “(i) initially to grant an alien nonimmigrant
2 status described in section 101(a)(15)(H)(i)(b); or

3 “(ii) to obtain authorization for an alien having
4 such status to change employers.

5 “(B) The amount of the fee shall be \$100 for each
6 such petition.

7 “(C) Fees collected under this paragraph shall be de-
8 posited in the Treasury in accordance with section
9 286(u).”.

10 (b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—
11 Section 286 of the Immigration and Nationality Act (8
12 U.S.C. 1356), as amended by section 303 of this Act, is
13 further is amended by adding at the end the following:

14 “(u) H-1B ANTI-FRAUD ACCOUNT.—

15 “(1) IN GENERAL.—There is established in the
16 general fund of the Treasury a separate account,
17 which shall be known as the ‘H-1B Anti-fraud Ac-
18 count’. Notwithstanding any other provision of law,
19 there shall be deposited as offsetting receipts into
20 the account all fees collected under section
21 214(c)(10).

22 “(2) USE OF FEES TO COMBAT FRAUD.—

23 “(A) ATTORNEY GENERAL.—

24 “(i) PROGRAMS TO ELIMINATE
25 FRAUD.—20 percent of amounts deposited

1 into the H-1B Anti-fraud Account shall
2 remain available to the Attorney General
3 until expended for programs and activities
4 to eliminate fraud by employers filing peti-
5 tions described in section 214(c)(9)(A) and
6 aliens who are the beneficiaries of such pe-
7 titions.

8 “(ii) REMOVAL OF ALIENS.—20 per-
9 cent of amounts deposited into the H-1B
10 Anti-fraud Account shall remain available
11 to the Attorney General until expended for
12 the removal of H-1B nonimmigrants (as
13 defined in section 212(n)(4)(C)) who are
14 deportable under section 237(a)(1)(A) by
15 reason of having been found to be within
16 the class of aliens inadmissible under sec-
17 tion 212(a)(6)(C).

18 “(B) SECRETARY OF STATE.—40 percent
19 of amounts deposited into the H-1B Anti-fraud
20 Account shall remain available to the Secretary
21 of State until expended for programs and activi-
22 ties to eliminate fraud by employers and aliens
23 described in subparagraph (A).

24 “(C) JOINT PROGRAMS.—20 percent of
25 amounts deposited into the H-1B Anti-fraud

1 Account shall remain available to the Attorney
2 General and the Secretary of State until ex-
3 pended for programs and activities conducted
4 by them jointly to eliminate fraud by employers
5 and aliens described in subparagraph (A).”.

6 **SEC. 305. ADDITIONAL REQUIREMENTS ON PETITIONING**
7 **EMPLOYERS.**

8 Section 214(c) of the Immigration and Nationality
9 Act (8 U.S.C. 1184(c)), as amended by section 304 of this
10 Act, is further amended by adding at the end the fol-
11 lowing:

12 “(11) The Attorney General may not approve any pe-
13 tition under paragraph (1) filed by an employer with re-
14 spect to an alien seeking to obtain or having the status
15 of a nonimmigrant under section 101(a)(15)(H)(i)(b) un-
16 less the employer satisfies the following requirements:

17 “(A) The employer—

18 “(i) is an institution of higher education
19 (as defined in section 101(a) of the Higher
20 Education Act of 1965), or a governmental or
21 nonprofit entity; or

22 “(ii) maintains a place of business in the
23 United States that is licensed in accordance
24 with any applicable State or local business li-

1 censing requirements and is used exclusively for
2 business purposes.

3 “(B) The employer—

4 “(i) is a governmental entity;

5 “(ii) has aggregate gross assets with a
6 value of not less than \$250,000—

7 “(I) in the case of an employer that is
8 a publicly held corporation, as determined
9 using its most recent report filed with the
10 Securities and Exchange Commission; or

11 “(II) in the case of any other em-
12 ployer, as determined as of the date on
13 which the petition is filed pursuant to reg-
14 ulations promulgated by the Attorney Gen-
15 eral; or

16 “(iii) provides documentation of business
17 activity pursuant to regulations promulgated by
18 the Attorney General.”.

19 **SEC. 306. REQUIRING FILING OF W-2 FORMS.**

20 (a) IN GENERAL.—Section 212(n)(1) of the Immi-
21 gration and Nationality Act (8 U.S.C. 1182(n)(1)), as
22 amended by section 202 of this Act, is further amended
23 by inserting after subparagraph (H) the following:

24 “(I) The employer will, with respect to each em-
25 ployee who is an alien admitted or provided status

1 as a nonimmigrant described in section
2 101(a)(15)(H)(i)(b), annually submit to the Sec-
3 retary of Labor a copy of the most recent statement
4 under section 6051 of the Internal Revenue Code of
5 1986. Such submission may be made by electronic
6 means.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) applies to applications described in section
9 212(n)(1) of the Immigration and Nationality Act made
10 on or after October 1, 2000, but only with respect to state-
11 ments made under section 6051 of the Internal Revenue
12 Code of 1986 on or after January 1, 2001.

13 **SEC. 307. EFFECTIVE DATE.**

14 Except for the amendment made by section 306, the
15 amendments made by this title shall apply to petitions
16 filed under section 214(c), and applications filed under
17 section 212(n)(1), of the Immigration and Nationality Act
18 on or after the date final regulations are issued to carry
19 out such amendments.

1 **TITLE IV—EXTENSION OF PROVI-**
2 **SIONS FROM THE AMERICAN**
3 **COMPETITIVENESS AND**
4 **WORKFORCE IMPROVEMENT**
5 **ACT OF 1998**

6 **SEC. 401. PROTECTION AGAINST DISPLACEMENT OF**
7 **UNITED STATES WORKERS IN CASE OF H-1B**
8 **DEPENDENT EMPLOYERS.**

9 Section 212(n)(1)(E)(ii) of the Immigration and Na-
10 tionality Act (8 U.S.C. 1182(n)(1)(E)(ii)) is amended by
11 striking “2001,” and inserting “2002,”.

12 **SEC. 402. ADDITIONAL INVESTIGATIVE AUTHORITY.**

13 Section 413(e)(2) of the American Competitiveness
14 and Workforce Improvement Act of 1998 (as contained
15 in title IV of division C of the Omnibus Consolidated and
16 Emergency Supplemental Appropriations Act, 1999; Pub-
17 lic Law 105–277) is amended by striking “2001.” and in-
18 serting “2002.”.

